Supreme Court, U.S.
FILED

03 350 JUL 3 2003

No.

IN THE SUPREME COURT OF THE UNITED STATES

RAYMOND J. CASCELLA, Petitioner

v.

CANAVERAL PORT AUTHORITY AND STATE JUDGE'S J. PLEUS, COBB AND JJ. PALMER INDIVIDUALLY AND OFFICIALLY

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

Raymond J. Cascella
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42 pp

## QUESTIONS PRESENTED

1. Is the Eleventh Amendment of the Federal Constitution a restraint over a suit for Mandamus against a state political subdivision that is a state-owned marine terminal operator?

2. Is the Eleventh Amendment of the Federal Constitution a restraint over a suit for Mandamus by a debtor in bankruptcy because the creditor political subdivision removed their state lawsuit for eviction to Federal Bankruptcy Court and then losing their case for eviction, without remand then revive the state case by judicial usurption of power and evict the debtor?

3. Does a political subdivision, even if it could be construed that it had state sovereignty, waive its immunity of the Eleventh Amendment when it elects to remove its lawsuit it filed against the debtor to Federal Court and that court now, has personal jurisdiction over the political subdivision?

4. Is it not true that once there is a Federal Constitutional or Statutory violation, state law cannot prevent necessary remedy because under the supremacy clause, federal remedy prevails and Mandamus is proper? (U.S.C.A Const. Art 6 cl 2).

5. Is it not true a court may have jurisdiction over the parties and the subject-matter, yet if it makes a decree which

is not within the powers granted to it by the law of its organization its decree is void, or if state judges attach their jurisdiction to a federal case is this fraud, their judgment as individuals and officials of the state is in excess of their powers and must be declared void?

6. If the Eleventh Amendment makes no explicit reference to sovereign immunity, and it contains no literal barrier to federal suits to enforce the Constitution and the laws of the United States, is it not proper for mandamus to lie against the state judges in their official capacity and individual capacity to protect the rights of a United States citizen in bankruptcy court?

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## PETITION FOR A WRIT OF CERTIORARI

Raymond J. Cascella respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for Eleventh Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals is the first item in the appendix.

## JURISDICTION

The judgment of the court of appeals was entered on February 7, 2003. The order denying reconsideration was entered on April 7, 2003. This Court's jurisdiction rests on 28 U.S.C. 1254(1).

## RULE INVOLVED

Federal Rule of Civil Procedure 17 (a) applies.

## STATEMENT

This case involves the petitioner, Mr. Raymond Cascella, hereafter "Cascella" and the Canaveral Port Authority, hereafter "CPA". The case involves three Florida State Appellate Judges: Honorable J. Pleus, Cobb and J.J.Palmer,hereafter the "Judges".

Cascella applied to the Eleventh Circuit Court of Appeals for a Writ of Prohibition and Mandamus. (2nd Item in Appendix) Cascella owns a commercial building with no mortgage on leased land from the CPA. The entire package includes retail, and a yard for wharfage.

The CPA and Brevard County Florida entered litigation of land taxes. The CPA lost its immunity and decided to pass the new taxes on to its tenants. Due to lengthy litigation between county and the CPA, a political subdivision, years passed and the Florida Supreme Court, by a 5-4 vote ruled for the county.

The CPA passed the principal and interest penalties in one lump sum to Cascella. Cascella believes he has an exemption. The CPA filed a state circuit court eviction on Cascella. Cascella and others filed a separate lawsuit against the CPA on the tax issue. Cascella had no debts but now a very large claim by the CPA for a sum of Eighty Thousand dollars, that forced an oral ruling for eviction but not yet in written judgment form.

Cascella files Chapter 13 in the U.S. Bankruptcy Court, Middle District of Florida, Orlando Division. The CPA files a notice of removal of the state eviction case to

bankruptcy court. (3rd Item in Appendix) The CPA moves for a summary judgment for eviction in the removed case.

Bankruptcy Judge Briskman denies the eviction on the grounds that Cascella's tax lawsuit against the CPA must be resolved.

After a year or so and before the finalization of the ongoing state lawsuit by Cascella and other port tenants, the CPA **without a remand** reopened the removed case (that is now a federal adversary case) in state court by a verified motion.

The CPA relitigates the case, obtains an eviction. On page 17 of the February 18, 2002 hearing before Judge Maxwell, Cascella tells the state judge that the tax issue is before Federal Judge Briskman and overruled the CPA. (4th Item in Appendix) The judge ruled in favor of the CPA. Cascella appealed to the Fifth District Court of Appeals for Florida. Cascella argued that the state courts and including the 5th DCA do not have subject matter jurisdiction to hear a federal case that has not been remanded back to state court. He also stated that federal law requires a remand and a certification of the order by the federal court clerk filed with the state court clerk. Cascella lost and file for a re-hearing and re-hearing en banc. Both were denied. Cascella filed for the petition of writ of prohibition and mandamus. The Eleventh Circuit denied them because mandamus "may not be used as a substitute for an appeal" and that there was no usurpation of power. Also Cascella asked the Eleventh Circuit in his petition for mandamus to order the CPA to reinstate his lease. The court said on page 2 federal courts have no general power to compel state officials to comply with state law. This would be an Eleventh Amendment bar as

cited by the case: Pennhurst State School & Hospital et al. v Terri Lee Halderman et al., 465 US 89, 79L.Ed 2d 67,104 Sct 900 in the Eleventh Circuit denial of Cascella's petition. The result is Cascella is wrongfully evicted by the CPA using a federal case without a remand in state courts that have no jurisdiction. The CPA, lost their immunity of sovereignty by the Eleventh Amendment (arguendo they ever had immunity) by removing their state eviction case to Bankruptcy Court. And further the CPA has no immunity because of the Commerce Clause and the Shipping Act 46 U.S.C. app 1709(d)(1) that protects Cascella's maritime lease. See Garcia v San Antonio Metropolitan Transit Authority, 469 U.S. 528,554 (1985). Also the Supremacy Clause of the Constitution gives the Federal Courts the power to correct a clear abuse of discretion or usurption of judicial power through writs of mandamus.

U.S. 20 Fed. Appx 847, certiorari denied 122 S.Ct. 930, 151L.Ed2d 892. And last, the CPA as a political subdivision does not have state immunity as expressed by the Supreme Court in The County of Lincoln v Nicholas Luning (S.C. Reporter 529, 534), 133 U.S.

## REASONS FOR GRANTING THE PETITION

Petitioner Cascella includes as the 5th item in the appendix CPA's Response of Canaveral Port Authority to motion for rehearing in the state appellate court. CPA said: "Appellate Cascella now argues for the first time that the a separate order of remand was also required before the circuit court could go forward." This contention misconstrues". The CPA state eviction case was Brevard County No. 05-19999-CA-09 682-XXXX-XX and upon removal to Bankruptcy Court became Federal Adversary No. 99-00105, Middle District,

Orlando Division. The action by the Florida Circuit Judge and the 3 state appeals judges, and the CPA is **rank usurption of power**. The reason is they acted upon a Federal Case No. 99-00105 in which the U.S. Bankruptcy Judge Briskman denied the CPA's movement for eviction and officially and as individuals decided to reverse the authority of a Federal Judge and evict Cascella. Federal District Courts and Bankruptcy Courts cannot issue writs. Only Federal Appeals Courts can.. The CPA never obtained a remand for their case nor did they file a motion for a remand. Remedy of Mandamus to reinstate Cascella's rights in the leasehold is the proper writ in this extraordinary situation.

A. FEDERAL SUPREMACY: PREEMPTION

The federal supremacy is a preemption in bankruptcy laws and a preemptive effect of the commerce clause. It also pre-empts municipal corporations and political subdivisions. As to the respondent CPA.

## SECTION I BANKRUPTCY PREEMPTION

States as well as their political subdivisions are bound by federal law; they must comply with federal law, and federal law can ensure that they do . U.S.C.A. Const. Art 6, c12 The Bankruptcy Code, including sec 106, was enacted by Congress under its Article 1 Bankruptcy Clause powers "to establish uniform laws in the subject of bankruptcies through the United States". The Eleventh Amendment prevents congressional authorization of suits by private parties against unconsenting states. In this instant case a political subdivision of the state **filed** a lawsuit against a citizen and then removed it to federal jurisdiction is a waiver of its Eleventh Amendment rights. The CPA addressed the

eviction issue of unpalatable alternatives it faced when deciding whether to participate in a bankruptcy proceeding or exercise its sovereign right to stay home.

In the case In Re O,Brien Cite as 216 B.R. 731 (Bkrcy D. Vt 1998) on page 738 sec. 10 the court said "Congress has already acted. Any attempt by Vermont officials to avoid or evade the privileges and immunities conferred by Congress on debtors would be a crime 18 U.S.C.A. 242 and would give rise to a civil remedy, 42 U.S.C. 1983, and the judicial power incontestably covers both."

This judicial power must be exercised by a writ of mandamus to reinstate Cascella's rights to his lease. Not forgetting he owned the 15,000 square foot building on the leased land, mortgage-free, and now lost that through the CPA's illegal actions.

## SECTION II

## COMMERCE CLAUSE PREEMPTION

Cascella's lease is a maritime lease because there is wharfage and warehousing as well as retailing maritime products. Also, there is a restaurant allowed by virtue of the maritime lease. The Federal Maritime Commission –Docket No 02-02 ruled against the CPA and were found to have violated section 10(b)(10) of the Shipping Act of 1984, 46 U.S.C. app 1709 (b) (10), by unreasonably refusing to deal or negotiate for tug franchise at the port.

The CPA made a Tenth Amendment Argument, the Commission disagreed with the CPA and rejected their preemption argument. The Commission in its lengthy

analysis cited the case of Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528. 554 (1985) and that Congress has the Authority delegated to the federal government by the Constitution. And that in California v United States 320 U.S. 577, 585-86 (1944) the Supreme Court found that a state-owned marine terminal operator was an "other person" furnishing wharfage, dock warehouse, or other terminal facilities is subject to regulation by the Commission. The court said "The crucial question is whether the statute, read in the light of the circumstances that gave rise to its enactment and for which it is designed, applies to public owners of wharves and piers.

With so large a portion of the nation's dock facilities as Congress knew, owned or controlled by public instrumentalities, it would have defeated the very purpose for which Congress framed the scheme for regulating waterfront terminals to exempt those operated by governmental agencies."

## SECTION III

## NO. ELEVEN AMENDMENT PREEMPTION

## FOR A MARINE TERMINAL POLITICAL

## SUBDIVISION

The Eleventh Amendment of the Federal Constitution is only a restraint, in those suits in which the State is a real party or a party on the record. This was said by Chief Justice Marshall in Osborn v The Bank 22 U.S. 9 Wheat 738, 857 (6: 204, 232). The CPA is not the State of Florida. Moreover, in Lincoln County v Luning (See S.C. Reporter's ed 529-534)

the court decided that state immunity was not extended to state subdivisions. The CPA has no sovereign immunity and mandamus can lie against it.

B. FEDERAL COURTS MUST PRESERVE

THE APPROPRIATE RELATION

BETWEEN STATE AND NATIONAL

POWER AND IN THIS INSTANT THE STATE JUDGES

OFFEND THE CONSTITUTION AND CONGRESSES

LAW 28 U.S.C. 1447 PROCEDURE AFTER REMOVAL

The Florida Appellate Judges were more than amply briefed by Cascella in his motion for rehearing based on no remand and inter-system preclusion. (See 6th Item in Appendix – Motion Rehearing) Sec 1447 dictates by the law the procedure for remand to return the case to state jurisdiction. The judges usurped federal judicial power. Once the federal court has found federal constitutional or statutory violation under supremacy clause, federal remedy prevails. See Perkins v City of Chicago Heights, 47 F. 3d 212 and since the Bankruptcy Judge denied eviction the resjudicata impact of the federal judgment is a question of federal law which state court is bound to apply under supremacy clause. U.S.C.A. Const Art 6 c12 see Sullivan v First Affiliated Sec Inc 813 F2d 1368 cert. Denied 108 S. Ct. 150. Every state judicial officer is solemnly committed by oath to support the Federal Constitution. The supremacy clause binds state

judges, thus these State judges acted unlawfully because they interfered with the Federal Bankruptcy judgment (that denied eviction of Cascella), and acted unlawfully to undermine its goals.

The Supreme Court has previously demanded of state judges to comply with the Federal Constitution.. The Supreme Court must ensure the uniform interpretation of federal law. Quoting James Madison, Judge Warren said that "without a supremacy in the exposition and execution of them (laws) would be as much a mockery as a scabbard put into the hands of a soldier without a sword. "Mandamus is proper against the state judges.

## CONCLUSION

In the 1830s, South Carolians angered by federal protective tariffs, adopted the Nullification Doctrine, holding a state can void an act of Congress. The state was the first to secede and, in 1861 Confederate troops fired on and forced the surrender of U.S. troops at Ft. Sumpter in Charleston Harbor, launching the Civil War.

Now there is a new kind of warfare by the state and its political subdivision. The state judiciary today are just as much usurpers as those confederate rebel cannoneers who fired on Ft. Sumpter. There is a great public interest here. Cascella's "illegal" state eviction case is a matter of state record and eventually will be published in the Southern Reporter 2nd. Now lawyers losing in the Federal forum, without a remand, will take the issue back to a friendly state of Florida Judge and avoid any previous ruling by obtaining a new one from a court with no jurisdiction. The lawyers will have the knowledge that the Federal Courts by the Eleventh Circuit ruling (against Cascella) cannot enforce federal law

The Federal Courts should issue writs of mandamus against judges and lower court when they patently and unambiguously lacks jurisdiction and breaks Federal Law.

**The petition for a writ of certiorari should be granted.**

Raymond J. Cascella
515 Newfound Harbor Drive
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(321) 459-1657

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

**No. 02-16550-D**

Dist. Ct. Docket No. 01-00558-CV-ORL-06

INRE: RAYMOND J. CASCELLA,

Petitioner.
On Petition for Writ of
Mandamus to the
United States District Court
For the
Middle District of Florida

BEFORE: BARKETT and HULL, Circuit Judges

BY THE COURT:

Raymond J. Cascella files this mandamus petition, seeking "to quash the State of Florida 5th District Court of Appeals opinion filed September 6, 20002 and recall its [m]andate just recently filed after denying petitioner's motion for rehearing and a rehearing en banc." He also requests that this Court order the Canaveral Port Authority (CPA) to reinstate his land lease. Finally, Cascella requests that this Court issue a writ of prohibition to "prohibit the [CPA], the state trial courts and appeals courts from assuming jurisdiction "

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT FEB 07 2003 THOMAS K. KAHN Clerk

Mandamus relief is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." Jackson v. Motel 6 Multi~Purpose. Inc.. 130 F.3d 999,1004 (11th Cir. 1997). Mandamus may not be used as a substitute for appeal, or to control decision of the district court in discretionary matters. IQ. The petitioner has the burden of showing that the claimed right to issuance of the writ is clear and indisputable. ~ See In re Lopez-Lukis. 113 F .3d 1187,1188 (11thCir. 1997).

Similarly, writs of prohibition only should issue if the petitioner shows "exceptional circumstances amounting to a judicial 'usurpation of power,'" and the right to relief is "clear and undisputable." In re: Wainwright. 678 F.2d 951,953 (11 th Cir. 1982) (citations omitted). Writs of prohibition are not to be used as a substitute for an appeal or to control the decision of the trial court in discretionary matters. Id.

Cascella has not met his burden of showing a clear and indisputable right to mandamus relief \ because the relief he requests cannot be granted by this Court. Cascella asks this Court to (1) quash the final order of the Florida District Court of Appeal and (2) direct the CPA to reinstate his lease. However, federal courts have no general power to compel state officials to comply with state law. Pennhurst States Sch. & HoSD. v. Halderman. 465 U.S. 89, 104-107, 104 S.Ct. 900,910-911,79 L.Ed.2d 67 (1984); Move v. Clerk. DeKalb County Superior Court, 474 F.2d 1275, 1275-76 (5th Cir. 1973) (finding that federal court could not employ mandamus relief to compel state court clerk to comply with a request for production of documents);

Lamar v. 118th Judicial Dist. Court of Texas, 440 F.2d 383, 384 (5th Cir. 1971) (nothing that "federal courts have no general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought). Accordingly we lack jurisdiction to grant either mandamus relief or the writ of prohibition. Therefore, Cascella's petition for writ of mandamus and prohibition is **DISMISSED.**

"s/_____"

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 02-16550-D

Dist. Ct. Docket No. 01-0055 8-CV -ORL-06

IN RE:

RA YMOND J. CAS CELLA, Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the Middle District of Florida

BEFORE: BARKETT and HULL, Circuit Judges

BY THE COURT:

Raymond J. Cascella moves for reconsideration of this Court's February 7,2003. order dismissing his petition for writ of mandamus and prohibition. A party seeking rehearing or reconsideration must specifically allege any point of law or fact that this Court overlooked or misapprehended. ~ Fed.R.App.P. 40. In this case, Cascella merely reiterates the arguments from his original mandamus petition, and he fails to allege any point of law or fact that this Court overlooked or misapprehended. Accordingly, his motion for reconsideration is DENIED.

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT
APR 07 2003 THOMAS K. KAHN Clerk

App. 5

UNITED STATES CIRCUIT COURT FOR THE ELEVENTH CIRCUIT

In re RAYMOND J. CASCELLA

File No. U.S.C.A.-02-16550-J

PETITION FOR WRITS OF PROHIBITION AND MANDAMUS

The petition of Raymond J. Cascella for prohibition shows

1. This is an action for a writ of Prohibition under Federal Rules of Appeal Procedures 21.

2. The facts on which petitioner relies are:

(a) Respondents are Canaveral Port Authority, Cape Canaveral, Florida, P.O. Box 267, zip 32920, the State of Florida 5th District Court of Appeals Judges J. Pieus, Judge Cobb and Judge J.J. Palmer, 300 South Beach Street, Daytona Beach, Florida 32114 and State of Florida, 18th Judicial Circuit Judge Maxwell, Harry T and Harriette V Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Fla 32940-8006.

(b) The case of 05-19999-CA-09682-xxxx-xx in the 18th Judicial Circuit Court for Brevard County, Florida is captioned Canaveral Port Authority, a political subdivision of the State of Florida, vs Raymond Cascella, defendant.

© Raymond Cascella is in Bankruptcy in the United States Bankruptcy Court, Middle District of Florida, Orlando Division, case no: 99-02900-6B3.

(d) Canaveral Port Authority, henceforth called "CP A" removed the case and on May 20, 1999 filed a Motion to Consolidate the case which is now U.S. Bankruptcy Court Adv. No: 99-105 with adversaries numbered 106 and 107. The motion was granted the Bankruptcy Court entered an order consolidating adversaries 105, 106 and 107.

(e) Pursuant to an order dated November 16, 1999, adversary No: 106 was remanded to the Florida Circuit Court.

(f) Trial and Disposition

A trial of adversaries 105 and 107 was scheduled for September 18,2000 at 9:30 a.m. Docket entry 37. On March 9, 2001, the court entered its memorandum opinion and judgment. Docket entries 64 & 65. On May 7, 2001, the Court entered its judgment that counterclaim of "CP A" seeking eviction of plaintiff is denied. Docket entry 90

(g) APPEAL

On March 14,2001, the DebtorlPetitioner Cascella filed his notice of appeal to the United States District Court. On May 8, 2001 the record was transmitted to the District Court. The Debtor's appeal has been assigned District Court Case No: 01-CV-558-0rl-06KRS.,

(h) Adv cases 105 and 107 are a single judicial unit for the purpose of Federal Rule of Civil Procedure 54(b).

(i) Debtor Cascella is appealing Adv. Case No: 107 only.

(j) On December 7th, 2001 "CPA" filed a motion for Relief from Stay to permit the landlord to terminate the lease agreement between landlord and debtor. Debtor owns free and clear a 12,000 sq. ft. commercial building on "CPA's" land.

(k) Order granting "CPA's" motion for relief from stay was entered by Hon. Judge Briskman, U.S. Bkrt Judge 11th day of January 2002.

(l) "CPA" did not file a lawsuit for eviction, but instead filed a Verified Motion for Entry of Final Judgment of Eviction in the State Circuit Court using the previously removed case 05-1999-CA-09682-XXXX-XX which is Adv. No. 105, in which "CPA" lost their counterclaim for eviction.

(m) "CPA" never filed a Motion for Remand of a Removed Case nor obtained an Order of Remand of a Removed Case.

(n) Title 28 Sec. 1331 U.S.C.A. gives the Federal District Courts jurisdiction of all actions arising under the Constitution, laws or treaties of the United States Federal R. Civ. P. 81© abolishes writs in the District Courts and the jurisdiction lies with this court, the 11th Circuit and there is no other adequate remedy available.

(o) Federal Title 28 Sec. 1447 Procedure after removal generally: section c, requires the party seeking a remand of a removed case to file a motion within 30 days if the reason is other than the subject matter jurisdiction. And if the motion is granted a certified copy of the order of remand of a removed case shall be mailed by the clerk to the clerk of the state court. [ see Rosenberg v GWV Travel, Inc. 448 Supp 95(1979) pg 95-96 sec 7 ]

(p) The "CPA" did not try and never obtained the needed order of remand, nor could they because the case reached its finality and the statute of limitations of 30 days past. [ to file such a motion for remand, for a rehearing or an appeal ]

(q) The state circuit Judge Maxwell, who was not the original judge accepted the order from relief of stay as a remand and ruled in Favor of the CPA. This was contrary to Federal Law.

Further the evidence by sworn testimony proved that both sub-tenants were paying their rent to the trustee Gene Chambers and that amount was more that what the debtor needed to pay the CPA. Also the taxes on the building were current. The tax issue is about Brevard County now taxing the "CPA" land under non-governmental usage. The CPA has not paid them unless their tenants pay to the landlord "CPA". Even though it is the CPA responsibility by law, they want to bill late fees and interest to the debtor/petitioner Cascella. The Federal Bkrt Judge in his ruling denied CPA the fees and interest. Also Cascella takes the position that he is exempt by Florida Statute just like a mobilehome owner is on leased land.

® Petitioner filed an appeal in state court and lost. Also on the same issue that the case was in Federal jurisdiction and an order of remand was necessary ie: even arguendo that statute

of limitations has no tolled the time, the petitioner lost a rehearing enbac.

(t) In the Appendix is "CPA" attorney Olney's response to the rehearings in which it states the "need for an order of remand a removed case as some sort of an order and it is clear no such addition was necessary."

(s) It was illegal to reinstate the removed case and the state circuit and appeals court are without jurisdiction to proceed with the action that is presently consolidated and in Federal Senior Judge Young's Court.

(u) A Writ of Prohibition is sought without delay to prohibit the Canaveral Port Authority, the state trial courts and appeals from assuming jurisdiction and damaging the petitioner further.

WHEREFORE petitioner demands a writ of prohibition prohibiting respondents from assuming jurisdiction and jurisdiction in proceedings supplementary of the closed Federal Case and from doing any act or thing in it. And command the state judges and state courts to refrain perpetually from exercising or attempting to exercise jurisdiction of the Federal Court case formerly that state circuit case 05-1999-CA-09682-XXXX-XX.

Raymond J. Cascella
515 Newfound Harbor Dr.
Merritt Island, Florida 32952
321-459-1657

I HEREBY CERTIFY that a copy has been mailed to respondents Canaveral Port Authority, Cape Canaveral, Florida, P.o. Box 267 zip 32920, the state of Florida 5th District Court of Appeals Judges J. Pleus, Judge Cobb and Judge J.J. Palmer, 300 South Beach Street, Daytona Beach, Florida 32114 and State of Florida, 18th Judicial Circuit Judge Maxwell, Harry T and Harriette V Moore Justice Center 2825 Judge Fran Jamieson Way, Florida 32940-8006 on the 2nd day of December 2002.

BY_____

Raymond J. Cascella
515 Newfound Harbor Drive
Merritt Island, Florida 32952
321-459-1657

App. 10

PART II

The petitioner RAYMOND J. CASCELLA sues respondent Canaveral Port Authority, Cape Canaveral Florida, P.O. Box 267, zip 32920, the State of Florida 5th District Court of Appeal Judges, Judge J. Pleus , Judge Cobb and Judge J.J. Palmer, 300 South Beach Street, Daytona Beach, Florida 32114 and State of Florida, 18th Judicial Circuit Judge Maxwell, Harry T and Harriette V Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Fla 32940-8006.

1. This is an action for writ of mandamus under Federal Rule Appeal Procedure 21.

2. Petitioner seeks to quash the State of Florida 5th District Court of Appeals opinion filed September 6, 2002 and recall its Mandate just recently filed after denying the petitioner's motion for a rehearing and a rehearing on banc. Their opinion was denovo of a reopened state case that Canaveral Port Authority removed to Federal Bankruptcy court and was assigned Bankruptcy Adversary number 105. The bankruptcy court held a trial on September 18, 2000 at 9:30 a.m. and Canaveral Port Authority's counter claim of "CPA" seeking eviction on taxes was denied.

And further order the "CPA" to reinstate petitioners land lease.

3. ISSUE PRESENTED BY PETITIONER:

Petitioner Raymond Cascella knows that adversary case 105 was concluded at trial with adversary 107. Petitioner has a pending appeal before Judge Young in the U.S. District Court, Middle District of Florida, Orlando Division with the case no: 6:01-cv-558-Orl-06KRS. Adversary cases 105 and 107 are a single judicial unit for the purpose of F.R. Civ. P. 54(b)

The Canaveral Port Authority is the plaintiff in the State case 05-1999-Ca-09682-XXXX-XX, now adv. 105, Federal appeal #6: 10-cv-558-Orl-06kRS and the"CPA" does not have an Order of Remand of a Removed Case and their actions are illegal.

4. The Facts on which Petitioner relies are:
Petitioner incorporates the same facts from Part-Prohibition. These facts start on page 1 paragraph 2(a) through (s)

5. Petitioner attaches a separate appendix that includes the following:
(a) Canaveral Port Authority's Motion for Entry of Final Judgment of Eviction in the removed state case 05-1999-CA-09682-xxxx-xx with exhibits.
(b) U.S. District Court Order by Senior U.S. District Judge George C. Young deny "CPA" 's motion to dismiss Petitioner/Debtors appeal.
© Motion to Consolidate state court case in Bankruptcy court.
(d) State of Florida de novo opinion by the 5th DCA.
(e) Petitioner/Debtor/State appellant's Motion for Rehearing
(f) Petitioners Affidavit of Proof
(g) CPA's Notice of Removal
(h) Petitioner/Appellants Notice of Request to Take Judicial Notice filed in State of Fla. 5DCA case 5D02-774
(i) Petitioner/Debtor/Appellants Motion for Rehearing en Banc
(j) CPA's Attorney Olney's Letter of September 27, 2002 to 5th DCA and Response of CPA to Motion for Rehearing En Banc and rehearing.

6. The Writ of Mandamus must issue because there is no other remedy and this Federal Court has jurisdiction over Federal Cases in its District. This drastic remedy must be invoked because it is an extraordinary situation because inferior courts have acted wholly without jurisdiction and have so clearly abused their discretion as to constitute a judicial usurpation of power. The state courts of Florida manifests a persistent disregard of Federal law and Federal rules.

WHEREFORE petitioner prays for a writ of MANDAMUS and a reinstatement of his land lease.

"s_____"
Raymond J. Cascella
515 Newfound Harbor Drive
Merritt Island, Fla. 32952

I HEREBY CERTIFY that a copy has been mailed to respondents Canaveral Port Authority, Cape Canaveral, Florida P.O. Box 267 zip 32920, the State of Florida 5th DCA Judges Pleus, Cobb and Palmer 300 South Beach Street, Daytona Beach, Florida 32114 and State Circuit Judge Maxwell, 2825 Judge Fran Jamieson Way, Fl. 32940-8006 on the 2nd day of December 2002.

"s_____"
Raymond J. Cascella
515 Newfound Harbor Drive
Merritt Island, Fla. 32952
321-459-1657

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

RAYMOND J. CASCELLA, Case No.: 99-02900-6B3
Debtor.
_____/

CANAVERAL PORT AUTHORITY,
A political subdivision of the State of
Florida,

Plaintiff, Adv. No.:_____
vs.

RAYMOND J. CASCELLA

Defendant.
_____/

NOTICE OF REMOVAL

Defendant, Canaveral Port Authority, a political subdivision of the state of Florida, ("CPA") removes this action styled Canaveral Port Authority v. Raymond Cascella, Case No.: 99-09682-CA-F, from the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida, to the United States Bankruptcy Court for the Middle District of Florida. CPA grounds this removal on the following facts and law:

1. Raymond J. Cascella ("Debtor") filed a petition for relief under Chapter 13 of the United States Bankruptcy Code on April 6, 1999. (the "Petition Date")

2. Prior to the Petition Date, CPA filed its complaint Debtor in Count I of the Complaint, CPA seeks to evict the Debtor from the real property owned in Brevard County, Florida based upon the Debtor's failure to comply with the non-residential lease agreement requiring the Debtor to pay all taxes levied upon the lease property during lease term. Count II seeks monetary judgment against Debtor for the delinquent ad valorem real estate taxes levied on the property for tax years 1992 and 1994 through 1997. As of March 1999, the total outstanding tax bill is approximately $79,000. In Count III, CPA seeks to recover double rent pursuant to Par 83.06 Fla Stat.

3. On or about March 30, 1999, Debtor filed his answer and affirmative defenses to the Complaint. Debtor filed a counterclaim against CPA asserting the same relief he asserted in Cascella v Canaveral Port Authority, Case No. 16568-CA-N and Eastern American Tech Corp. et. al. v. Rod Northcutt, Brevard County Tax Collector, et. al. Case No.: 99-3673-CA-M, specifically denying he was obligated to pay to CPA any real estate taxes levied on the leased premises.

4. The allegations raised in this action constitute a "core" proceeding pursuant to the jurisdictional provisions of title 28. Debtor seeks a declaration as to his duty to pay taxes on the subject leased premises, which is an obligation he must satisfy before he can properly assume the lease pursuant to the provisions of 11 U.S.C. Par 365. Accordingly, this action is a "core" proceeding pursuant to Par 157(b)(2)(A) and (O) and subject to removal by CPA.

5. Additionally, it is without dispute that this action fits squarely into this Court's "related to" jurisdiction powers since the outcome of the state court proceeding will have an effect on the administration of the bankruptcy case. To maximize judicial efficiency and prevent the possibility of inconsistent results, this Court is the proper to lear the merits of the state court action as they apply to the Debtor's bankruptcy case.

6. This court has jurisdiction over this matter pursuant to 28 U.S.C. Par 1334 and 1452.

7. This removal notice is filed within the time constraints provided under Rule 9027, Fed. R. Bankr.P.

8. CPA files herewith true and correct copies of all pleadings and papers on file in the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida, Case No.: 99-09682-CA-F.

WHEREFORE, Canaveral Port Authority files this Notice of Removal and removes this action to the United States Bankruptcy Court for the Middle District of Florida, Orlando Division.

Respectfully submitted,

_____

Jules S. Cohen, Esq.
Florida Bar No.:
W. Glenn Jensen, Esq.
Florida Bar No.: 0126070
AKERMAN, SENTERFITT &
EIDSON, P.A

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Citrus Center, 10th Floor
255 South Orange Avenue
Post Office Box 231
Orlando, Florida 32802
Phone: (407) 843-7860
Fax: (407) 843-6610
Attorneys for Canaveral Port Authority

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal was furnished by first class mail, postage prepaid to Allen D. Scott II, Esq., attorney for Defendants, 99 Orange Street, St. Augustine, Florida 32084-3564, Debtor, Raymond J. Cascella, 680 George King Blvd., Cape Canaveral, Florida 32920, David r. Mc Farlin, Esquire, Debtor's attorney, 1551 West Colonial Drive, Orlando, Florida 32804; and Laurie K. Weatherford, Chapter 13 Trustee, Post Office Box 3450, Winter Park, Florida 32790-3150 this 5th day of May 1999.

"s/_____"
W. Glenn Jensen

Orlando, Florida 32602
Phone: (407) 843-7860
Fax: (407) 843-6610
Attorneys for Canaveral Port Authority

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal was furnished by first class mail, postage prepaid to Allen D, Scott, II, Esq., attorney for Defendants, 99 Orange Street, St. Augustine, Florida 32084-3564, Debtor, Raymond J. Cascella, 680 George King Blvd., Cape Canaveral, Florida 32920, David R. McFarlin, Esquire, Debtor;s attorney, 1551 West Colonial Drive, Orlando, Florida 32804; and Laurie K. Weatherford, Chapter 13 Trustee, Post Office Box 3450, Winter Park, Florida 32790-3150 this 5th day of May 1999.

W. Glenn Jensen

Witness, Your Honor, which will validate that the original offer was made in November and brought before the Port Authority Commissioners meeting.

THE COURT: We're not here to retry the case. We're not here for me to – it's almost ministerial.

MR. BISTLINE: Yes.

MR. CASCELLA: Your Honor, first of all, the original reason was over taxes, which Judge Briskman overruled, and they are on back taxes which are in litigation today. It's coming up March 4th or 8th I guess it is. Allen Scott is representing fifteen other people.

MR. BISTLINE: Judge –

MR. CASCELLA: So the actual issue that I supposedly was evicted for was actually premature, because there was a case pending at the time and Judge Briskman overruled that and said that until the case is finished with all fifteen that the taxes will be due then, if any.

MR. BISTLINE: Your Honor –

MR. CASCELLA: And I'd like to –

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

RAYMOND CASCELLA
Appellant
V Case No. 5D02-774.
CANAVERAL PORT AUTHORITY,
Appellee
_____/

APPELLANT;S MOTION FOR REHEARING

RAYMOND CASCELLA, appellant moves for an order on his Motion for Rehearing by Fla. Rules of App. P. 9.330 and as grounds says:
1. This court overlooked points of law in appellant's POINT SIX ON APPEAL in his initial brief.

A. The lower court relitigated a claim and issues that were heard in Bankruptcy Court, a Federal Court.
B. The doctrine of Intersystem Preclusion is in effect.
1. The doctrine covers claim preclusion (res judicata)
2. The doctrine covers issue preclusion (collateral estoppel)

2. Appellees filed a Motion fior Eviction after a partial lifting of the automatic stay as to an in rem only issue of the lease.

3. A partial relief from the automatic stay or even total relief from the automatic stay is not an order that permits relitigation of a claim and issues already ruled on in a Federal Court

4. Appellees previously REMOVED this case under appeal to the bankruptcy court.

See exhibit 1 Affidavit of Proof
See exhibit 2 Notice of Removal
See exhibit 3 Motion to Consolidate

4. This appellate court misapprehended the law that the record in this case under appeal does not show an ORDER OF REMAND OF REMOVED ACTION from the Federal Court that is a certified copy; nor any order at all.

MEMORANDUM OF LAW

WHEN state claims are resolved in federal court, the identical claims may not be relitigated by the same parties in state court.

See Restatement (Second) of Judgments 25 cmt. E. illus. 10(1982) stating that unless it is clear that federal court declined as matter of discretion to exercise pendent jurisdiction, state action is barred. Federated Dep't Stores Inc. v Moitie, 452 U.S. 394,404,101 S.Ct. 2424,69L.Ed. 2d 103 (1981) (Blackmum & Marshall JJ., concurring Restatement (Second of Judgments 23 cited with approval). Thus in this case under appeal, the lower court could not relitigate.

AND FURTHER

When this case at hand, 18th Circuit, Brevard County Florida, No.: 05-1999-CA-09682-XXXX-XX was REMOVED by Plaintiff/appellee's to FEDERAL JURISDICTION, all state courts in Florida lost jurisdiction including the 18th circuit. Appellees statement by their attorney Harold Bistline to Judge Maxwell:

> "We have finally got the bankruptcy court to release the stay and authorize us to come to you to finish this". (R-41 L12-14).

Was a fraud on the court.

He knew that there was no ORDER OF REMAND OF REMOVED ACTION.

Appellant cites: __-ROSENBERG V GWV TRAVEL, INC 480 F.Supp.95(1979)

Pg95-96 Sec &: "Entry of an order of remand of removed action and mailing a certified copy to state court completely divests the federal court of jurisdiction and reinvests the state court with jurisdiction.
28 U.S.C.A. 1447©."

And the case HOTEL, MT. LASSEN, INC.debtor 207 B.R. 935 (Bkrtcy E.D.Cal. 1997)

Declares on page 935 sec 3 Bankruptcy:
"Principle of comfortable coexistence for general federal federal remand statute and bankruptcy removal statute's remand provision requires that procedures of bankruptcy statute be given effect. 28 U.S.C.A 1447©,1452(b)."

and bankruptcy courts lack authority to make sua sponte remand to state court.
28 U.S.C.A. 1447©

CONCLUSION

Appellant is a common man and his conclusion is simply put. He is not a botanist but He knows enough not to try to smell poison ivy.

1. The law and rules of INTERSYSTEM PRECLUSION control this case under appeal and there can be no relitigation and Judge Maxwells order must be declared void and a nullity.

2. There record shows no Bankruptcy ORDER OF REMAND OF REMOVED ACTION of state case 99-09682-XXXX-XX and the jurisdiction is in Federal Court and Judge Maxwells order must be declared void and a nullity.

Raymond Cascella
515 Newfound Harbor
Merritt Island, Fla 32951

I HEREBY CERTIFY THAT a copy hereof has been furnished to Harold T. Bistline, 1970 Michigan Avenue, BldgE, Cocoa, Fl 32922 and Patricia K. Olney, 677 Dave Nisbet Dr. Suite 111, Port Canaveral, Fl 32920 by mail on September 12, 2002.

"s/"

RAYMOND J. CASCELLA
Appellant
515 Newfound Harbor Dr.
Merritt Island, Fl 32952
321-459-1657

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AFFIDAVITS OF PROOF

STATE OF FLORIDA
COUNTY OF BREVARD

Appellant RAYMOND J. CASCELLA says his is the debtor in UNITED STATES BANKRUPTCY COURT, MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION case No: 99-02900-6B3 and of his personal knowledge knows that the State of Florida, Eighteenth Circuit case No.: 99-09682-XXXX-XX was removed to Federal court by the Appellee Canaveral Port Authority; that hearings were held and rulings and orders made by the presiding Federal Judge Honorable Arthur Briskman.

The court noticed adversary hearings through consolidation of Adv. Case Nos. 99-105, 99-106- and 99-107. Adv. Case No. 99-105 is state court case 99-09682-XXXX-XX that has been assigned a State of Florida 5th DCA case no: 5D02-774.

Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.

_____
Raymond Cascella
Appellant

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

RAYMOND CASCELLA,
Appellant,

v. Case No. 5D02-774

CANAVERAL PORT AUTHORITY,
Appellee.
_____/

APPELLANT'S NOTICE OF REQUEST TO TAKE JUDICIAL NOTICE

TO: HAROLD T. BISTLINE & PATRICIA K. OLNEY
Attornies for Port Canaveral, the Appellee

YOU ARE NOTIFIED that the undersigned requests the court to take judicial notice of:

1. Case No.: 99-02900-6B3 in the UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION.

2. The Adversary Proceedings in Adv. Case Nos: 99-105, 99-106 and 99-107.

3. The NOTICE OF REMOVAL of the state of Florida action styled Canaveral Port Authority v. Raymond Cascella Case No.: 05-1999-CA-09682-XXXX-XX that has been assigned as Adv. Case No: 99-105.

4. The record in the pending Bkr case 99-02900-6B3 and the fact there is no ORDER OF REMAND of REMOVED

ACTION and no record of a mailing a certified copy to state court.

5. The fact that Federal Statute of Limitations of 30 days has expired and the issue of whether the action No. Fla. 05-1999-CA-09682-XXXX-XX should be remanded to State Court was not resolved by reference to the complaint at the time the petition for removal was filed.

The undersigned certifies that a copy hereof has been furnished to Harold T. Bistline, 1970 Michigan Avenue, Bldg. E, Cocoa, Fl 32922 and Patricia K. Olney, 677 Dave Nisbet Dr., Suite 111, Port Canaveral, Fl 32920 by mail on September 12, 2002.

RAYMOND J. CASCELLA
Appellant
515 Newfound Harbor Drive
Merritt Island, FLA 32952
321-459-1657

AFFIDAVITS OF PROOF

STATE OF FLORIDA
COUNTY OF BREVARD

Appellant RAYMOND J. CASCELLA says his is the debtor in UNITED STATES BANKRUPTCY COURT, MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION case No: 99-02900-6B3 and of his personal knowledge knows that the State of Florida, Eighteenth Circuit case No.: 99-09682-XXXX-XX was removed to Federal court by the Appellee Canaveral Port Authority; that hearings were held and rulings and orders made by the presiding Federal Judge Honorable Arthur Briskman.

The court noticed adversary hearings through consolidation of Adv. Case Nos. 99-105, 99-106- and 99-107. Adv. Case No. 99-105 is state court case 99-09682-XXXX-XX that has been assigned a State of Florida 5th DCA case no: 5D02-774.

Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.

_____
Raymond Cascella
Appellant